

Union Calendar No. 77

111TH CONGRESS
1ST SESSION

H. R. 2765

[Report No. 111-154]

To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2009

Mr. COHEN (for himself, Mr. ISSA, Mr. CONYERS, Mr. NADLER of New York, Mr. FRANKS of Arizona, Ms. ZOE LOFGREN of California, Mr. COBLE, and Mr. POE of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 15, 2009

Additional sponsors: Ms. JACKSON-LEE of Texas, Mr. SHERMAN, Mr. JOHNSON of Georgia, and Mr. MAFFEI

JUNE 15, 2009

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. RECOGNITION OF FOREIGN DEFAMATION**
 4 **JUDGMENTS.**

5 (a) IN GENERAL.—Part VI of title 28, United States
 6 Code, is amended by adding at the end the following:

7 **“CHAPTER 181—FOREIGN JUDGMENTS**

“Sec.

“4101. Definitions.

“4102. Recognition of foreign defamation judgments.

“4103. Attorneys’ fees.

8 **“§ 4101. Definitions**

9 “In this chapter:

10 “(1) DOMESTIC COURT.—The term ‘domestic
 11 court’ means a Federal court or a court of any
 12 State.

13 “(2) FOREIGN COURT.—The term ‘foreign
 14 court’ means a court, administrative body, or other
 15 tribunal of a foreign country.

16 “(3) FOREIGN JUDGMENT.—The term ‘foreign
 17 judgment’ means a final judgment rendered by a
 18 foreign court.

19 “(4) STATE.—The term ‘State’ means each of
 20 the several States, the District of Columbia, and any
 21 commonwealth, territory, or possession of the United
 22 States.

1 **“§ 4102. Recognition of foreign defamation judgments**

2 “(a) FIRST AMENDMENT CONSIDERATIONS.—Not-
3 withstanding any other provision of Federal or State law,
4 a domestic court shall not recognize or enforce a foreign
5 judgment for defamation whenever the party opposing rec-
6 ognition or enforcement of the judgment claims that the
7 judgment is inconsistent with the first amendment to the
8 Constitution of the United States, unless the domestic
9 court determines that the judgment is consistent with the
10 first amendment. The burden of establishing that the for-
11 eign judgment is consistent with the first amendment shall
12 lie with the party seeking recognition or enforcement of
13 the judgment.

14 “(b) JURISDICTIONAL CONSIDERATIONS.—Notwith-
15 standing any other provision of Federal or State law, a
16 domestic court shall not recognize or enforce a foreign
17 judgment for defamation if the party opposing recognition
18 or enforcement establishes that the exercise of personal
19 jurisdiction over such party by the foreign court that ren-
20 dered the judgment failed to comport with the due process
21 requirements imposed on domestic courts by the Constitu-
22 tion of the United States.

23 “(c) JUDGMENT AGAINST PROVIDER OF INTER-
24 ACTIVE COMPUTER SERVICE.—Notwithstanding any other
25 provision of Federal or State law, a domestic court shall
26 not recognize or enforce a foreign judgment for defama-

1 tion against the provider of an interactive computer serv-
2 ice, as defined in section 230 of the Communications Act
3 of 1934 (47 U.S.C. 230), whenever the party opposing rec-
4 ognition or enforcement of the judgment claims that the
5 judgment is inconsistent with such section 230, unless the
6 domestic court determines that the judgment is consistent
7 with such section 230. The burden of establishing that the
8 foreign judgment is consistent with such section 230 shall
9 lie with the party seeking recognition or enforcement of
10 the judgment.

11 “(d) APPEARANCES NOT A BAR.—An appearance by
12 a party in a foreign court rendering a foreign judgment
13 to which this section applies for the purpose of contesting
14 the foreign court’s exercise of jurisdiction in the case, mov-
15 ing the foreign court to abstain from exercising jurisdic-
16 tion in the case, defending on the merits any claims
17 brought before the foreign court, or for any other purpose,
18 shall not deprive such party of the right to oppose the
19 recognition or enforcement of the judgment under this sec-
20 tion.

21 **“§ 4103. Attorneys’ fees**

22 “In any action brought in a domestic court to enforce
23 a foreign judgment for defamation, the court may allow
24 the party opposing recognition or enforcement of the judg-
25 ment a reasonable attorney’s fee if such party prevails in

1 the action on a ground specified in subsection (a), (b),
 2 or (c).”.

3 (b) CLERICAL AMENDMENT.—The table of chapters
 4 for part VI of title 28, United States Code, is amended
 5 by adding at the end the following:

“181. Foreign judgments 4101.”.

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